

# THE CLINICAL COMPONENT IN UNIVERSITY PROFESSIONAL EDUCATION

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In other times and circumstances one might take up clinical education directly for its intrinsic merits within the professional school curriculum without reference to other problems of education. We might forego examining even briefly the university and higher education outside the professional school. But the broad title of this program, *Professional Education in the Contemporary University*, suggests a wider look at the university and higher education, at least for perspective. An even stronger incentive for such a look comes from the recent upheavals on campuses in which physical violence became commonplace.

Because of such an abundance of wide-ranging social protest with tactics and philosophy of destruction, it is in order to point out that there are critics of the university who are friends of the university and of higher education, and who are concerned with preservation of human values and improvement of education through reform. Advocates of clinical experience in the law school count themselves as such critics.

What is the clinical component in university professional education? The clinical component is that in which the professional actually performs a specialized service for a person who needs his particular skill. It is the practice of the profession as a student under faculty supervision. When done in a professional school as part of qualifying for the professional degree it is properly called clinical education since it involves the teaching, supervising and rating of the student's performance by someone representing the professional school. In medicine the customer for the service is called a patient. In law he is called a client. The same or similar terms are used in other professional-customer relationships.

## I. CLINICAL EDUCATION AND THE UNIVERSITY

In the overall scheme of higher education, because it takes the advanced student out of the classroom, clinical education in the professional school is a corrective for the deficiencies inherent in a long process of classroom type education where the student has larger and larger doses of so-called knowledge pumped into him over a longer and longer period of time on the assumption that it is all good for him. Educators tend to overlook the corrosive effect of so much confinement to the campus on the human personality. The student's role is passive. He is locked away from the rest of the world in the sense that he is a consumer and not a producer of foods, services, or even ideas. He reaches and passes well into adulthood still

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beng spoonfed from various sources, and most especially by the university and its faculty whom he sees more than anyone except his fellow students. At most the student may have an occasional opportunity to become an observer in some field experiences. He fails to find anything that is peculiarly his as a contribution to the world. He suffers from an increasingly poignant sense of lack of fulfillment. A fundamental part of the student's personality is retarded in its growth—that part which takes us through life with at least that small sense of security which comes from the knowledge that we can do something of consequence to others in the larger world. The older we get, the more we need to participate in a productive way in the larger world and not just in the university world, for we know instinctively that somewhere out there is the real world for all of us; and that for most of us formal education is the preparation for the real thing—not the real thing itself.

Because human development also requires learning through doing clinical education is a necessity at the professional school level in higher education. It gives the student a real life role in the world as an integral part of his education. Though not the whole answer to what is best for the human personality and soul in a prolonged educational process, the clinical element can serve to make educators aware that they should concern themselves with the whole being which is the student as well as about how to make a better technical or intellectual contribution in their speciality. For we will not truly educate, or even know the tranquility we need to educate, if we do not also address ourselves to the basics in human development, as well as to cutting out the cancer of war, the vices of society at large, and even the corruption in the university. For it is the innate restlessness of the frustrated and unfulfilled adult student, as well as these other factors, which results in the phenomena we are witnessing on campuses.

We shall continue to be shortsighted if we do not read these signs correctly. Certainly educators have to be concerned about what appears on the students' placards, although they do not have to adopt the same viewpoints. But they also need to be concerned about what is not on the posters and placards. How long should higher education be? Can the students afford the price, psychologically and otherwise, of so much exposure to intellectual brilliance? Or could they do with a semester or two less here and there along the way? Universities are not organized at all, let alone organized to consider such problems. But they will have to reorient their thinking along these lines if the definitions of the problems and their answers are not to be dictated from the outside.

Unfortunately, even educationally-oriented foundations have not awarded attention to such fundamental educational matters. They have catered to and encouraged questionable propensities in universities, instead of acting as constructive critics whose strength comes from steadfast support of

higher education. Philanthropy has been uncritical instead of being the private, friendly critic higher education needs. Its record is not good enough. How many grants have been made for quality education in fewer years as contrasted with grants encouraging longer years of study? How many have even raised the possibility of going one way rather than the other? Perhaps the fact is that philanthropy too has viewed higher education so much in terms of the teacher that the student is all but forgotten. Foundation grants have tended so much to encourage research, consulting, travel, etc.—all activities which by and large reduce teacher-student contact, rather than increasing it. How to reverse these tendencies involves tough problems worthy of the best brains in philanthropy and in higher education. The directions we need to take may be indicated by suggesting that we should get agitated over what we may be doing to our students, as well as for them. Clinical experience in the professional school is a force for making us confront this issue because it does make the student an actor as well as a spectator.

Peculiarly enough the isolation of students in prolonged higher education of the traditional type also leads the student to assume an air of intellectual arrogance and superiority. There is a prevailing tendency always to substitute great thoughts for the apparently small deeds which human existence calls for. One can detect such arrogance even in the so-called revolutionary campus rhetoric and most certainly in the actions of those who perpetrate deeds on the academic community in the name of change or revolution for the better. In this sense, it appears, the student learns too well some of the lessons of the academic community. The longer he stays on campus the more he deals in the currency of the realm; large issues; masses of people; intellectual gymnastics; verbal fireworks—either hissing sparklers or exploding charges.

The human experience is distilled into abstractions, necessarily so, for the purposes of teaching. But there is a dehumanizing element in all this. Individuals and their petty lives become reduced in size and consequence. We forget that smallness and decency are more of the essence of humanity than greatness and brutality. We do not learn how to deal with one person's problems, or even with those of hundreds or thousands. These become intellectually expendable. Physically removed on the campus from the masses, teachers and students seem to believe that their thoughts grow in importance as they deal with millions and with larger issues. Smaller quantities of people can be ignored or brushed aside. We do it subliminally in the educational process at the higher levels, particularly in law and in the social sciences.

It is an easy leap from learning about life in this dehumanized way to believing that this is the way actually to approach the solution of life's problems: exclusively on a grand scale. Think big! This is the lesson the

students learn well, capitalizing as well on the natural affinity and need of the young for arrogance. Analysis on a global or cosmic scale leads easily to "solutions" on a global or cosmic scale.

Clinical education, in its confrontation with the individual's share of the world's headaches, humanizes the educational process. It teaches that while the professional's intellect dissects the larger problems and places the individual's plight in the larger setting, the professional's dedication and skill also has to be used in solving the individual's problems for the sake of the individual and not for the sake of the answer to the big problem. In the person-to-person helping role, the professional, still as a student, begins to add to his intellectual competence a feeling for humanity and decency. He learns through the insistent demands of another personality the necessity of placing restraints on his own leanings: to work out approaches that are suitable to more than his own inclinations, to repress the arrogance which would dictate answers for others.

Related to this is clinical education's value in inculcating a bent for persistence and application, for sustained constructive effort, despite the inevitable frustrations of life. It should be easier to appreciate the destructive inclinations in many today, when all of us have heard the shrill exhortation to burn and otherwise destroy, coupled with the assurance that the aftermath of an orgy of destruction is bound to be paradise on earth. Some of us may suspect that, instead, the intervening fires of hell may serve as the model for the ensuing state of affairs. But the important thing is the recognition that the educational process has to take into account the development of maturity by encouraging experience which teaches us how to live with frustration as well as achievement, in fact to use each frustration as a launching pad for achievement.

It is not surprising that the rage of rebellion vents itself so fiercely on the university. Thus it is in regard to those from whom we expect the most. Rage against parents can be savage. A whole profession of psychotherapy has been built on this phenomenon. The university inherits the same unenviable position. It becomes the object of fury stemming from frustration when the young discover the imperfections in their parents and in the university, and, of course, in the rest of the world. When we are small we instinctively strike out at the loved one when we do not get what we want. As we mature, we learn to turn our propensity for violence and destruction because of frustration into an energy for constructing our own version of the world. We realize instinctively that there is no merit to destruction per se. We enjoy decreasing satisfaction in what others can hand over to us. We move to constructive action for ourselves in what is known as responsibility. We learn how to live with loss as well as with gain along with those who say: "You can't win 'em all."

Clinical education contributes to accelerating this passage to maturity

and to constructive behavior. It rewards the person with an instinctively well-ordered direction and philosophy by giving him the opportunity to move toward his goal by tangible acts. Clinical education teaches that, no matter how well-conceived a grand scheme, it takes dedication and work over a long period to move toward realization of the scheme. It also instructs that no scheme, however brilliant intellectually, has any meaning if it cannot be translated into the demands of human existence and individual lives. Clinical work prepares us additionally for life as people and professionals by making us able to move ahead in spite of loss and frustration, by giving us enough avenues of forward motion and new opportunities, because there are always individuals who can open avenues of success for us, in addition to those who are our companions in failure.

There is still another aspect of higher education which stands to be humanized by clinical education. The reference here is to the phenomenon of so-called credentialism and the self-centered outlook it engenders. Parenthetically it should be noted that self-centeredness is also at the root of other problems already referred to: educators who see the schools as serving their purposes with an accompanying lack of concern for students; educators and students who develop an arrogance that they know best for the rest of the world; and students who want what they want and now, so that persistence beyond frustration is not considered an important human trait to be cultivated.

American higher education has provided, and continues to provide, credentials for those who did not inherit them, making it possible for such persons to move to higher positions professionally, socially, and economically. With all of the criticism that any aristocracy is subject to, credentialism based on higher education is like democracy "the worst system except for all the rest." It needs to be improved, not scrapped—at least until a better system is devised.

Being so widely available in this country, higher education has contributed enormously to social mobility. In the process it has been sold on the basis of economic and social benefit to the individual. Statistics have been marshalled showing the higher life earnings of a college graduate. There has been little subtlety in this effort, because the purpose has been to appeal to the strongest personal motivations of the young generation, and of their parents who pay the taxes and vote the public policies which are the foundation of support for institutions of higher education.

If these motivations are strong at the college level, they are stronger at the graduate and professional school level. They have to be, to justify the added investment of time, money, and everything else. They are, because the professional school is even more clearly designed to lead into a paying occupation of high standing.

Thus there is a powerful element in education stressing that it is for the

personal benefit of the student. Probably the unspoken assumption is that society benefits this way—according to Adam Smith—as each one pursues his own end.

While these motivations are essential, educators can and do take steps to broaden the outlook and the development of the student beyond his own career ambitions. To be effective this must go further than intellectual content of teaching or exhortation. Clinical work involves the student in the problems of other people as a central part of training for a profession. Without undermining the personal motivations, clinical work perforce exposes the student to the fact that he has to serve another in order to bring respect to himself and his profession, as well as earn from others the income which determines his standard of living. In clinical work the student learns to give as well as to receive, to do it with grace and compassion, with understanding and satisfaction, and also that his professional education is for rendering service to others and not just to be exploited. All this is learned as part of, and not separate from, formal education, broadening its content and meaning, and making it more than the acquisition of a personal benefit in the form of credentials.

In the Age of Aquarius how does one tell the spurious? How does one distinguish non-values or false values from genuine values? It is difficult and there is no single answer. But education has to deal with this problem as well as with data. This involves the development of judgment, an indispensable asset, as well as the acquisition of knowledge.

The difficulty of teaching as well as an appreciation of, and sensitivity for, true and lasting values is made greater by the fact that man does not live by bread alone. He must have diversions and entertainment as well as the company of other human beings, in short: theatre and community. Monotony and solitude result in madness—even the monotony of good works and good causes. There is such a thing as too much of a good thing. It leads to restlessness, and restlessness has made man move upward and forward, or downward and backward, as a geology professor used to say, "to the mesozoic slime." The choice of directions is dictated in large part by responsiveness to values as distinguished from distraction by entertainment or happenings as powerful as the pull of the latter is. In our age some of the best examples of good theatre are outside the traditional theatres themselves. In fact the enchantment and delight broadcast by theatrical performances has invaded the world of teaching, research, and other university activities—the latter category being constantly enlarged by so-called innovative and creative projects in which there is indeed greater and greater difficulty in telling the educationally sound from that which is spurious. Undoubtedly this is characteristic of a dynamic age. But here too clinical education can help in part as a yardstick for the developments of a time with so much emphasis on change. It does so by returning us regularly as

part of education to the context of service to another human being. It brings to the forefront an important criterion for measuring true value: Is what we are doing a benefit as well for other individual human beings in our society? This helps to balance the attractiveness of newness and innovation *per se*, suggesting that the new garments ought to be cut to fit the real needs of real people, rather than the other way around. It should sometimes encourage a second look to examine whether something is new, and to what end. It should reduce the propensity to embrace false advertising and false claims in the merchandising of educational and social gimmicks. There is no prospect, however, that anything will eliminate completely our desire to be fooled occasionally—all the more reason why we should try to develop as sound a judgment as possible in and through clinical education, given the clash of needs in the human personality.

What has been suggested up to this point is that those in higher education cannot educate if they maintain a stance that education is only concerned with the student and not with the person. Educators are dealing with people, and clinical education involves students as people. It returns educators to the function of general practitioner and expands their role beyond that of brain specialist.

It is significant that in some professions like medicine, social work, and teaching below the college level some clinical work is a well established part of professional education. There seems to be the realization that the professional here is dealing with people's lives in a profoundly important way, and that he should begin to learn how to do this while he is still in professional school. Indeed, it is assumed that he cannot learn his profession without such experience. Also evident is the fact that these professional schools have a fairly clear vision regarding the school's goal: It is to prepare members of a practicing profession. This is their acknowledged role, although it is understood that some graduates go off into other occupations—some related, some unrelated. To put it baldly: there is no hangup about the fact that the schools are there to produce the practitioners for a given profession.

In preparing for college or graduate teaching—another profession—the schools have gone to what might fairly be called the opposite extreme. There is no clinical work—indicating that teaching is not considered the real goal of the outstanding college or university professor. The extra hours of credit required for the Ph.D. are not important, nor are the oral exams. The payoff is in the written dissertation—a demonstration of research and writing capacity. This is not a preparation for teaching but for subsequent research and writing—the hallmark of a good college or university professor. He writes and performs primarily for his colleagues, and possibly for the world. He is rewarded for this in the form of bonuses. What he does to educate his students is incidental. From this he derives his

base pay—almost as a matter of routine. As a practical matter teaching encroaches on the time required for research, and very often is incompatible with the research temperament. It is assumed that the important thing is the knowledge gained from research; and that anyone can, or at least can learn how to, teach in a relatively short exposure to students. The graduate—read professional—training of professors is as though they were all to be practitioners in some vast research institute not as though they were going to be teachers of generations of students. This may in part account for the fact that educators and administrators in higher education do not dig into the total development of the student, preferring to limit themselves to the intellect of the student.

To recapitulate up to this point: First, clinical education at the professional school level is especially important at this time in higher education because it serves to correct certain tendencies now encouraged and which need modification. It does so by putting the student in a practitioner-client relationship as a normal part of his professional education. The particular ways in which it helps are:

a) It brings the student out of the classroom in a prolonged period of higher education—serving as a half-way house, if you will, on the way to the outside world.

b) In so doing it makes educators view the student as a whole person, and also view the effect of higher education on the person as well as the student.

c) It helps to offset the development of arrogance—a self-satisfied intellectual elitism. It gives reality to other people whom the professional serves, and puts them in the picture, so to speak, as partners in life with a worth of their own.

d) It teaches the necessity of persistence and application, and develops the fiber to withstand the crushing effects of frustration. It develops the capacity for constructive work for change of a sustained character, and lessens the emotional attractions of instant destruction.

e) It diminishes the self-centeredness of higher education—the all-consuming drive for credentials to cash in—by placing the professional-to-be in a helping relationship to another.

f) Finally, it helps to develop the judgment which instinctively leans toward the real values over the spurious ones—reducing to proper proportions the natural attraction of the theatrical, the entertaining, the new, *per se*.

## II. CLINICAL LEGAL EDUCATION AND THE LAW SCHOOL

In its flight to the university setting from the practitioner-apprentice tradition legal education has up to this point built itself a niche away from



the professional schools frankly preparing practitioners. Legal education is closer to the graduate faculties of social sciences with their bias for research as opposed to the practice of teaching; a bias in favor of self-improvement as a scholar; a belief that mankind will benefit automatically as the scholar or researcher pursues his own interests whether or not there is any apparent link to the tangible needs of others.

In this self-imposed segregation from the practitioner, legal education has stretched to the limit, and possibly beyond, the thesis that practitioners are not teachers, and teachers are not practitioners. In doing so, the self-styled national or quality law schools, which are the "Establishment" of legal education, have even professed that they exist not to produce practitioners, but to be the intellectual progenitors of the philosopher-kings of Plato, men and women who can rule in a democracy because of their merit (demonstrated by admission to and graduation from these outstanding schools), and by virtue of the legal education received (again from certain outstanding schools).

While the bulk of the law schools have not and cannot lose sight of their mission—to prepare practitioners—they too are put in conflict and in some confusion by the so-called leaders in legal education. This has been the situation in legal education until quite recently. It has only begun to change, although the indications are that there will be more changes in legal education than any of the experts have been imagining. The principal agent for change in the law school is clinical education, a growing phenomenon. The effects of clinical education will be felt not only in the law school, but at the college level, and, of course, in the administration of justice and the society.

Clinical education in the law school will exert a profound influence on legal education, probably by moving legal education closer to the professional schools like medicine and social work, where the avowed purpose is to produce practitioners and to be involved in the delivery of professional services to the public. As has just been mentioned, in the flight from the apprenticeship system the so-called leading and image-setting law schools in the university have modeled themselves on graduate faculties in those disciplines where the professional preparation through the Ph.D. is for research and writing, and not for practice, as teachers. Yet in both law and these other disciplines, the professional degree (Ph.D. or J.D.) is used to admit to practice as teacher or lawyer. Clinical education will serve to change this development which is more understandable historically, than justified by the needs of the public, the machinery of justice and the legal profession.

To focus more specifically, clinical legal education, in its stress on practice with a client, should help to clarify the real mission of the law school, which is to produce practitioners. This is always a plus, for we can always

do better when we understand what we are about. There is every reason to be proud of the American system of legal education, but not because its teaching produces better lawyers than any other system of teaching the law. In fact there is not one shred of evidence to suggest that the American law schools produce better practitioners than the system in England, where there are no law schools as such.

The important distinction between the American law school and the British scheme, where legal education *per se* is so much in the hands of the practitioners, is that the American law school has opened entry to the bar for all classes. Both systems seem to prepare good practitioners. The American system makes possible more open access and more upward social mobility. The schools essentially control who studies for the bar, and not the profession. In this sense the law school here is part of the social revolution wrought by the American colleges and universities. For these reasons successively upward mobile groups have sought the benefits of what has been called credentialism, which for all its drawbacks, has achieved an overriding social purpose of opening the paths of entry into the American Establishment. Catholic law schools are in part an evidence of this phenomenon, as are the substantial disparities in resources among law schools generally. The point is that many law schools with poor resources have been the launching pads to achievement for many financially poor boys and girls who were rich in talent.

These are the real facts of American legal education which are often lost sight of in a fog of shibboleths, the result of much oft-repeated talk among legal educators when they gather in professional conferences and meetings. An almost impenetrable miasma is caused by talk about the law schools producing—not lawyers—but so-called public leaders, as though the methods and curriculum for doing so exist, and even more important, as though this would be a desirable enterprise in a democracy—a kind of West Point for all important jobs outside the military. Clinical legal education is an imperative to save us from this immoral, anti-democratic, and thank goodness, nonsensical talk because it says the job of the law school is to produce lawyers first—some of whom will become leaders.

Those who talk about producing public leaders are walking around the facts, choosing what they like, just like at a smorgasbord. In all of this there is a lot of fuzzy thinking, promoted by narrow-minded self-interest, frequently embellished by high-sounding phrases. Of course, lawyers are bound to be public leaders. One whole branch of the government is largely a monopoly of lawyers. This is judicial administration. It includes public positions, like that of prosecutor and judge, as well as those who represent persons. In addition, because of the link to politics in the judicial system, lawyers move quite easily in and out of legislatures and executive posts. Lawyers, like the military, have a well staked-out governmen-

tal and political base. It is not strange that they too are a strong power group in government and out. Any assignment of an area of government to any segment of the population turns over substantial power, and also enhances the self-image held by the members of such a group—in this case, the lawyers. Such a situation quite readily leads some in the preferred profession to believe that what the public has given or allowed them to take “is an inalienable right,” in recognition of some special virtues not possessed by other members of the society. The same attitude begins to pervade the professional school, although significantly the perceptions are different in different schools.

In most law schools there always has been and there still is a fairly clear vision that the role of the school is to prepare practitioners to serve people; that the rewards of public office, if any, come because of this. But there are some schools which have reached the point of skipping over their reason for being—to produce lawyers for legal services. If they recognize the reality of practice, it is to practice, as they sometimes put it, “in the grand style.” Keeping their eyes on the stars, so to speak, they are avowedly in business really to produce those earlier referred to as Plato’s philosopher-kings: those who will wield important power and rule society because of their self-evident intellectual superiority and educational attainments.

Perhaps the culmination to date in this kind of thinking is the announcement by a well-known Northeastern university of its intention to start a law school to train “policy makers.” Presumably because the public has not yet accepted the validity of such a degree from a university, the prospective students were advised in a footnote that they would also be prepared to take the bar.

One can begin to suspect in the circumstances that “quality” and “standards” in some of these schools are almost synonyms for aristocratic and elite, rather than standing for what all would strive for: bettering legal service to all the people. By incorporating the reality of lawyer-client work through clinical education the law school may prevent its severance from the people without losing its opportunities for intellectual freedom.

Clinical legal education should help to restore balance and proper perspective. By its nature—lawyer-client work—it should inject into the life of the law school an instinctive appreciation of the fact that the legal profession and the professional schools which serve the profession exist to serve the people: whenever a client believes he needs legal service, as well as when the professional feels prepared to give service. It should also bring back an understanding of the democratic principle that power is given by the people to those who serve them and because of this deserve the delegated power, and also that those who a priori assert a special claim and

competence for public power are not living in the democratic tradition. This can be true of professions and professional schools, as well as of others.

Finally on this point—it is rather difficult to understand why those connected with a law school will not readily respond to a query on function and rationale with a proud response that their business is to prepare persons for the practice of the law. Is there anything disgraceful or demeaning about such a statement? If there is then the teacher-lawyer and the practitioner-lawyer had both better clean up the house they both live in. They should look to their responsibility for doing so, rather than attempting to avoid it.

A large part of the impetus to avoidance of such a direct response as to role comes from the fact that the confusion about the role of the law school thrives on the failure to deal directly with how one prepares law teachers as distinguished from law practitioners. Though unstated as a rule, the practice seems to be that the graduates of certain favored law schools are best qualified to teach, especially if on law review cum post-graduate experience with an appellate judge. This surpasses in unfounded presumptiveness even the non-sequitur treated above in discussing the use of the Ph.D. as a license for college teaching. Nevertheless there always has to be some system, "the system" only being the one inveighed against at the moment by those pushing for change. Since not all the graduates of these favored schools choose to become law teachers, these same schools have invented a so-called graduate degree in law, to be bestowed upon those who wish to teach although they were not fortunate enough to receive their first degree in law from these schools.

Only rare and passing attention has been given to the possibility that it might be desirable to have law teachers have some experience in practice before joining a faculty. All of this contributes to a gap between law teachers and law practitioners, as though they are not really members of the same profession. It is not a desirable state of affairs. Clinical work in the law schools also should help to give everyone, whether he becomes a teacher or practitioner, the feeling that he is a member of a practicing profession and honored by being part of such a profession.

Sad to say, history suggests that in and of itself clinical work as in medical education, for example, does not guarantee a greater concern with medical services for all. There is this one respect at least in which the records of medical and law schools coincide: They both have atrocious records of disregard for the problem of better professional services for all, regardless of the ability to pay. Only recently has this started to change. In this respect the records of the respective practicing professions are not much better, although in each case the practicing professions are doing much more now than the professional schools. In medicine there certainly was a first-hand awareness that working class and poor people get sick. There just

was no attempt to insure service. In law schools and in the upper echelons of the legal profession the mythology was created and propagated that working class and poor people do not have legal problems, or certainly not any "intellectually challenging" to law faculties: a landlord might have legal problems with a tenant, but a tenant became part of the landlord's problem, and not a human being who required his own legal counsel and representation. It would appear that the outside society has to impose its requirements for better professional services for all. When this happens clinical work can help too by preparing law graduates, as it does in medicine, to be better able to serve as practitioners.

It is also important to recognize that there are certain areas where the intervention of law schools through clinical work is an indispensable element for improving the administration of justice. For the foreseeable future law students and law faculty are the only ones who can do something which holds promise, day in and day out, of upgrading the machinery of justice.

Investigations, reports, reorganization are occasional actions with an impact of their own. But the continuing pressure for improvement must come from the permanent addition of a new factor in legal institutions. This can only be the ombudsman-like role of law students and their professors, which is in addition to their service as lawyers and what they learn in the process.

The ombudsman role and its effect will come from clinical work in such places as the local courts, police stations, prosecutors' offices, and jails and prisons. Experience already indicates that the physical presence of law students and their teachers in such locations has a salutary and elevating effect on practitioners, judges, and various public officials. It also has strengthened confidence in justice on the part of those who have not had the legal advice and assistance required. The law school which is satisfied with an occasional study of one of these settings is far from discharging its responsibilities. Over and above studies the law school can provide the continuing impulse to improvement through using such settings for some of its clinical programs. Incidentally, this creates the process through which the law school can much more readily be in touch with situations requiring study.

There is much to be learned about how to conduct clinical education in such settings. Some judges and opposing counsel have not taken kindly to zealous students who have forced them to go back to the library and look up cases. The same has been true of the reactions of some others. But by and large the effects have been accepted—if not heartily welcomed at first—and the public has benefited.

Is it all right to assume that the life of law students is to be comfortable in the future, as it has been up to now? Or that they even want it thus?

It is taken for granted that medical students have to spend nights, weekends, and even summers learning the dirty work on emergency calls, in wards, etc. Why not law students to advise those who are arrested in the middle of the night? To provide counsel in certain lower courts on a regular basis? To do the same in jails and prisons? If not the law schools through clinical work, then who? The answer cannot be that this is no concern of the law school. Nor can it be that law students are incapable of doing the job—because there is enough experience to show that they are able to do it very well, with some training and supervision, the latter being the task of the law school.

Unless clinical education grows and expands into these areas there is no likelihood that the law schools and the legal profession will succeed in cleaning up their own house—the machinery of justice. This is not a suggestion that law schools should not have other and more general concerns. It is only a strong plea to make the necessary contribution where they are uniquely qualified, and where no one else will or can contribute as much.

Once the law school becomes involved as the place to train practitioners, and as a center working to reform the machinery of justice through clinical work, it will adopt a different posture about matters relating to practice. No longer will the law school take the position that “the bar” can do it better as though “the bar” is a foreign agency. The bar itself can help in making things better, but it too needs the disinterested and specially-endowed machinery of education.

The improvement of the machinery of justice is a responsibility of the law school, but equally important is the teaching of such responsibility to the law student in the setting of the practice of the law. In several of its newsletters the Council on Legal Education for Professional Responsibility (CLEPR) has set forth the major educational values of clinical legal education for the law student. Teaching responsibility for improving justice has been described as follows:

. . . clinical legal education . . . can develop in the future lawyer a sensitivity to malfunctioning and injustice in the machinery of justice and the other arrangements of society, as they are reflected in the individual case. It is the lawyer's work on the individual case and with his individual clients that constitutes the essence of his professional job. It is in this environment, therefore, that he needs to learn to recognize what is wrong with the society around him—particularly what is wrong with the machinery of justice in which he is participating and for which he has a special responsibility. This is a special social aspect of clinical legal education, apart from the delivery of legal services by the law student.

Some legal educators have argued that a law student can learn more, or at least as much, about social problems by an adequate exposure to certain kinds of research including field and empirical research. There is no doubt that this is so. This is also so for students in any social science discipline—or indeed in any discipline. For a good research experience per se

can yield extraordinary insights into social problems. However, the future lawyers are not going through law school to learn how to conduct social science research projects on social problems. They are going through law school to learn how to serve persons who need legal services. This is still the primary function of the law school. Consequently it is important for the person training to become a lawyer to develop an instinct which leads him to perceive, from the specific facts of a case involving a client, a general social problem. For this is the form in which he will be exposed as a lawyer to the social problem, and not by way of the opportunity to make a special study of the problem apart from the handling of individual clients and cases. Of course law students should have the benefit of participating in good social science research—but not in lieu of a clinical experience with clients and cases.

A considerable part of the machinery of justice is the practice of the law. It happens to be a private practice but lawyers are officers of the court. This has to be recognized and dealt with explicitly. Clinical work in the law school plunges the law school into the myriad of matters involved in how the law is practiced. It moves the law school closer to the practicing bar, closing the undesirable gap between the two which has hitherto been referred to. It gives the professional school the opportunity to deal with standards of practice and behavior in a way which holds more promise than mere academic discussions of ethics. It takes up directly the fact that the machinery of justice creaks because of the disparity in standards of practice among different segments of the bar. We have written about responsibilities of the law schools in this respect, drawing attention as an educational value

. . . to the teaching of standards for the performance of the basic skills involved in service to a client and a cause by a lawyer. By this we mean such skills as interviewing, collecting facts, counselling, writing certain basic documents including pleadings, preparing for trial, and conducting trial matters, as well as following up after the conclusion of a trial. For years legal educators have eschewed the task of working these areas. The most commonly given reason has been that the law graduate will learn these skills best when he enters on his practice. The result has been to leave most law graduates to their own devices for they will have no postgraduate tutorial experience as an intern. Even those who will be tutored as interns after law school should gain from what they can learn in law school, for even in the best of settings and with the best of tutors there are certain commercial or institutional forces which restrict the young lawyer's efforts to the purposes of his employer and client as quickly as possible. In no institution outside the law school is there as much tolerance for abstract perfectionism and repeated efforts at refinement.

One of the most important standards to be taught is behavior in the sense of the professional managing his own emotions and intellect, and resolving the clashes which occur in him. We have described this as “. . . the opportunity for a law student to learn about the management of his emotional commitments to a client and his cause.”

In the law school, removed from the necessity to earn a fee, the law student has his best and possibly his only opportunity to learn about managing a proper commitment to a client and his cause. The student can learn what a high order of commitment should be. He also should be able to learn when a commitment becomes distorted in a professional service setting, when it may become destructive and counter-productive both for the lawyer and his client. There is a delicate sensibility about involvement and restraint which continues to be developed through extended life experience, but the law school can provide the best start at training these faculties. It should be the place first to become aware of these nuances in the rendering of professional services. Every experienced practitioner will recognize the tensions created in attempting to strike the proper balance in each lawyer-client relationship, and between one client and another.

In the live setting the law student will have to respond in a way that is fundamentally different from the response he is asked to give to a written problem. In the live situation the facts do not come in the relatively orderly sequence which is provided by writing. In real life the facts come quite often in a chaotic way. Indeed, the facts will not come without hard work at eliciting the facts. Quite often the source of facts turns out to be an abrasive or even abusive human personality. Yet this person is typical of many personalities who will be requiring legal services from the practicing lawyer. Instead of the comfortable and convenient printed page, the law student will be confronted with someone who may seem to be more of an antagonist than a person asking for his assistance. Still this is how people behave in periods of stress and strain when legal services are required. It is important that the law student be rubbed by a repetition of such experiences to find out how to maintain his capacity to think and to be useful as a lawyer under such circumstances.

These are indeed dimensions which legal educators are only beginning to explore as they enter the realm of clinical teaching. These areas have to be thoroughly developed if there is to be a more complete education of the lawyer, as well as a concern with the total machinery of justice which includes the private practice of the law as well as public rules, laws, and institutions.

There is already enough experience to suggest that student reaction and faculty involvement are moving quite rapidly to recognize the values of clinical education for the student. They do see the hastening of professional maturity and competence as a legitimate and vital function in legal education, as well as the benefits in broadening student involvement in the problems of reforming the administration of justice.

But while the goals are accepted there are still troublesome paths to be traveled on the way to achieving the goals. In fact there are painful choices as to which paths to travel.

Some of the greatest agonies, where they exist, come from a struggle in law faculties on how clinical legal education changes their existing world. It also comes from the uncertainties of a transition period when the unknown is so much more threatening than the known. There is a strong un-



settling factor in the prospect that clinical legal education may become an important part of the law school curriculum. It is probably the greatest change proposed in legal education since the creation of law schools as the replacement for the apprentice system. On this point we have said:

Legal clinics provide the opportunity to turn the constructive analytical skills of law teachers on law teaching itself in a way that goes beyond discussion of tweedle-dee and tweedle-dum, altogether different from the usual consideration of curriculum reform. The usual discussion of curriculum reform involves such alternatives to existing courses as using the problem or case-method; including written materials other than cases alone; experimenting with films, video tapes or simulations; or even devoting so-called new courses or seminars to the latest substantive area "discovered," be it "poverty law," "urban law," or "environment."

It is remarkable that in a professional school like the law school discussions of new subject matter and methodology have so largely ignored and avoided the educational potential of the real practice setting involving clients and practitioners.

It is often a favorite pastime to stress the great change that came from so-called hornbooks to so-called casebooks. Yet such discussions really show a willingness to manipulate apparent changes through teaching materials as against a real change such as happened by taking the law student out of the law office where he was not being taught adequately by lawyers, and placing him in a law school under professional teachers. Since that time nothing of equal significance has happened in legal education, although law professors have filled publications with articles on the assumption that changes have occurred, in the meantime urging more of the same—non-change or pseudo-change. These are good in-house pastimes, even if unimportant from the viewpoint of the world at large.

Clinical legal education does promise to make some major changes because it means taking some of the time now used for lectures and seminars and devoting it to the practice of law, step by step, under the tutelage and guidance and supervision and rating of law school faculty. It confronts the law school with putting together a curriculum and teaching staff which may be quite different in its various parts, instead of variations on the same theme played by the same kind of artists.

After two years of experience the Council (CLEPR) has learned much and seen certain trends developing. Everything that has been learned has come from the experience of the more than half of the ABA approved law schools which are involved in some clinical legal education effort with the aid of one of the seventy CLEPR grants made to date, and from the experience of other schools which have involved themselves in clinical legal education without any financial assistance from CLEPR.

Certain things are apparent and should be considered as indicative of what lies ahead in the development of clinical legal education. Most

schools which placed law students in legal services offices operated by other agencies have discovered that it is too difficult or even impossible to supervise their law students through the attorneys working in the office. Those who are operating lawyers cannot do justice to a workload and teach students at the same time. The workload in legal services offices is too heavy per attorney to successfully impose an additional burden on these attorneys. In addition there is always the question of whether every attorney is temperamentally suited to being a teacher-supervisor.

To get away from farming out their students in such situations law schools are setting up their own clinic operations. Some schools have started and operate their own legal services office. Others have taken over a part of an existing office and installed their own teacher-supervisors.

In having their own clinics the law schools have enhanced their potential for supervision. Students and teachers are clearer about the educational part of the venture. An accompanying phenomenon has been the restriction of caseload in order to permit more teaching and emphasis on quality work.

Along with such developments has come an increasing allocation of time and credit for such clinical work. It has become obvious that clinical work is very time-consuming; that it is easier to earn two or three credits in a class or seminar with a limited work liability. Clinical work is open-ended—much more so than regular classroom work. Live clients and the dynamic legal process do not fit neatly into a few predetermined hours a week. Law schools, therefore, are becoming involved in experiments with several days a week being devoted exclusively to clinical work, or even with clinical quarters and semesters. Credits awarded for such work have gone up correspondingly. In some cases the credits have gone up to the point where few traditional classroom courses are required to round out a semester. This too frees the student for more clinical work.

Except in one case the schools have not bridged the gap between indigent clients and those who are more affluent. Clinical work is still largely a practice of poverty law—civil or criminal. Neither have the schools worked out a way to utilize the practicing bar as part-time teachers—as is done in medicine. Both of these problems are unsolved and not being given enough attention.

As the states enact student practice rules, enabling students to appear in court, there is more attention to preparation of students for clinical work. The rules put the onus for certifying a student on the dean of a law school. This formality encourages attention to what the school should require for certification. This is good because schools are starting to set up a sequence of experiences and teaching situations which precede the privilege of going into court. In so doing schools are also beginning to consider what prepa-

ration a student should have before even interviewing and counseling a live client.

Not much attention has been given to the role of judges as students move into court. As they do so judges are inevitably drawn into the teaching process. They are tolerant of and helpful to students and their teachers, but they must temper this cooperation with an abiding concern that the judicial process must function quickly and effectively in the interest of the public. As the role of the judge develops he will undoubtedly be drawn into a more explicit teaching relationship with the law school and the bar.

There is, of course, also the question of who the clinical teacher should be and the difference between clinical education and apprenticeship. Viewing developments as they are occurring, we have had the following to say on these points:

We should emphasize briefly the difference between clinical education and apprenticeship. The former belongs to formal educational institutions. The latter belongs to the practitioner-employer. One cannot substitute for the other, although either or both may be omitted at a price paid in terms of educational benefit (clinical experience) or proficiency (apprenticeship). Proficiency comes from the kind of repetition of a task or tasks on the job which educational institutions cannot provide for any student. Educational benefits can be found and exploited in law school supervised clinical work.

The teachers who are and will be clinicians may not be the same kind of personality as the teacher who enjoys the reflective life, research, and who teaches mainly through lecturing. Perhaps the clinician will be more like the practitioner in personality. But he has to combine some of the practitioner's qualities with a desire to teach. He is the counterpart of the ideal classroom teacher who is supposed to combine the qualities of a scholar with a desire to teach. What is needed is as much tolerance at this stage for the practitioner-teacher who falls short of perfection as the tolerance we have developed for the scholar-teacher who doesn't quite measure up. We shall probably find a few practitioner-teachers who are really only practitioners, just as we find a few scholar-teachers who are really interested only in scholarship. And most likely we shall find teachers who fall down a bit on practice, just as their counterparts do on scholarship.

It may then be asked what the legal education of the near future may look like. First, one would hope for a reduction in the total number of years spent in college and law school. If the consideration of higher education reaches the fundamentals touched on at the outset of this paper, this would become a matter of highest priority, although perhaps the most painful for educators to confront.

Six years, instead of the present seven, should be enough time for college and law school. Like some other professional and graduate schools, law schools should require certain courses to have been taken at the college

level. An entering law student should have had certain courses in the social sciences, particularly in political science and public administration. And efforts should be undertaken immediately to have jurisprudence and the legal process made an integral part of these disciplines at the college level. Is there a valid reason for having college students learn how a bill goes through Congress while they remain totally ignorant of judicial proceedings and other parts of the legal process? A college graduate ordinarily knows nothing of the organization and selection of juries (on which he will be expected to serve) or of the difference between a civil and criminal trial. Why should not all college students and particularly ones who intend to go into the bar have such knowledge before they enter law school? Of course, a great deal of this needed material simply does not exist even at the law school level, and there will be work for some time to come while the materials are developed and put into use.

There need not be a sharp break between college and law school. Those intending to go into law should be able to take certain basic law courses in their fourth year of college. This would help to ease the transition, and also to make it easier to make the final commitment to continuing into the fully professional part of the curriculum.

The first year in law school should be devoted to the basic law courses, torts, contracts, property, criminal law—those that teach the basic relationships being regulated by law between man and man, and man and organized society. The summer between the first and second year of law school should be devoted to clinical work in interviewing and counseling and to observation of trial work by way of preparation for clinical work. The second and final year of law school should be all clinical, including trial work.

If such a basic reform makes the academics unhappy it will at least serve far better the needs of society for adequate legal services and a profession which is practice and people-oriented. Clinical legal education should help to move higher education in this direction.